## **UNPUBLISHED**

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA BIG STONE GAP DIVISION

LAWRENCE ALLEN SMITH, ET AL.,	
Plaintiffs,	) Case No. 2:02CV10152
v.	OPINION AND ORDER
MARSHA LAMBERT CHAMBERS, ET	) By: James P. Jones
AL.,	) United States District Judge
	)
Defendants.	)

Clifton Corker, Johnson City, Tennessee, and Richard Talley, Dandridge, Tennessee, for Plaintiffs; Howard C. McElroy, Bundy McElroy Hodges, Abingdon, Virginia, for Defendants.

In this diversity tort action arising out of a motor vehicle accident that occurred in Virginia, the defendants have moved to dismiss on two separate grounds, one of which I will sustain and the other I will not.

The defendants jointly move to dismiss the claim of Norma J. Smith for loss of consortium and services resulting from injuries to her husband. That motion will be granted, since no such cause of action exists under Virginia law. *See Carey v. Foster*, 345 F.2d 772, 778 (4th Cir. 1965).

The defendant Gary Lynn Chambers moves to dismiss the action as to him on the ground that insufficient facts have been pleaded as to his liability. It is alleged that the other defendant, Marsha Lambert Chambers, was operating the offending vehicle, and that Mr. Chambers, who owned the automobile, "improperly, negligently, and intentionally permitted [her] to operate the vehicle as described herein." (Compl. ¶ 9.)

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to the plaintiff, the plaintiff is not entitled to relief. The court may not dismiss a complaint unless the plaintiff can prove no set of facts which would entitle the plaintiff to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

It is not necessary to set forth a particular legal theory, but rather a party is required only to make "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

Negligent entrustment of an automobile to an unfit driver likely to cause injury

to others is a recognized cause of action in Virginia. See Turner v. Lotts, 422 S.E.2d

765, 767 (Va. 1992). While the plaintiff has not described in his Complaint the facts

surrounding such entrustment, the defendants have discovery available to them in

order to ascertain such facts. Moreover, the rules permit sanctions if the claim has

no likely evidentiary support. See Fed. R. Civ. P. 11(b)(3).

For these reasons, it is **ORDERED** as follows:

The Motion to Dismiss as to the claim of Norma J. Smith is granted and 1.

said plaintiff is hereby dismissed as a party; and

2. The Motion to Dismiss as to the claim against Gary Lynn Chambers is

denied.

ENTER: December 31, 2002

United States District Judge

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